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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHANA L. WEAVER,
LINDA J. THOMPSON,
DION L. KELLS, and
KURT W. NELSON

Appeal 2009-010916
Application 10/002,566
Technology Center 3600

Decided: June 18, 2010

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and ANTON W. FETTING, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Chana L. Weaver, Linda J. Thompson, Dion L. Kells, And Kurt W. Nelson (Appellants) seek review under 35 U.S.C. § 134 (2002) of a final rejection of claims 5-8, 10-13, and 15-20, the only claims pending in the application on appeal.

We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION[1]

We AFFIRM.

THE INVENTION

The Appellants invented a system and method for integrating a variety of data sources to provide product category management enabling retailers and others to make more informed decisions concerning the procurement, stocking, advertising, and/or selling of various products (Specification 1:4-8).

An understanding of the invention can be derived from a reading of exemplary claims 6, 11, 13, 15, and 20, which are reproduced below [bracketed matter and some paragraphing added].

6. A category management method comprising:

[1] Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed October 23, 2008) and Reply Brief ("Reply Br.," filed March 25, 2009), and the Examiner's Answer ("Ans.," mailed January 26, 2009), and Final Rejection ("Final Rej.," mailed March 26, 2008).

[1] obtaining data from plural data sources including a consumer purchase tracking data set and a demographics data set;

[2] using automated analysis to analyze at least a portion of said obtained data; and

[3] providing an integrated category management report based at least in part on said analysis, said integrated category management report being a targeted opportunity assessment and market analysis at least partially customized for an intended retailer end user.

11. The method of claim 7 further including providing a score card that tracks said category management over time.

13. The method of claim 7 wherein said network is a local area network.

15. The method of claim 6 wherein said integrated category management report includes a pricing suggestion for at least one product.

20. The method of claim 6 wherein at least one of said data sets relates to cereal.

THE REJECTIONS

The Examiner relies upon the following prior art:

McConnell	US 2001/0049690 A1	Dec. 6, 2001
Johnson	US 2002/0082900 A1	Jun. 27, 2002
Dippold	US 2002/0133479 A1	Sep. 19, 2002

Claims 5-8, 10, 12, 15, and 18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Johnson.

Claims 11 and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Johnson and Dippold.

Claims 13, 16, 17, and 19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Johnson and McConnell.

ISSUES

The issue of rejecting claims 5-8, 10, 12, 15, and 18 under 35 U.S.C. § 102(e) as being anticipated by Johnson, turns on, whether Johnson describes an integrated category management report, where the report is based on an analysis of consumer transactional history and demographic data.

The issue of rejecting claims 11 and 20 under 35 U.S.C. § 103(a) as unpatentable over Johnson and Dippold, turns on, whether the Appellants' arguments in support of claim 6 are persuasive and whether Dippold describes a score card.

The issue of rejecting claims 13, 16, 17, and 19 under 35 U.S.C. § 103(a) as unpatentable over Johnson and McConnell, turns on, whether the Appellants' arguments in support of claim 6 are persuasive and whether there is a motivation to combine Johnson and McConnell.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Johnson

01. Johnson is directed to a method and centralized system for the automated generation of information directed to products of one or more suppliers in response to user request criteria, collection of market trend data directed to users of the system and distribution of rebates certificates to the users as marketing incentives, through real time database creation and analysis over the Internet (Johnson ¶ 0002). The market research and user trend data, such as information directed to solvents or products selected or excluded by users, is forwarded to registered suppliers to allow the suppliers to track customer preferences, thereby enhancing information used in supplier business and marketing decisions (Johnson ¶ 0008).

02. Johnson specifically describes a product information generation, market research, and user trend data collection system (Johnson ¶ 0022). Market research and user trend data is collected automatically during utilization of the system (Johnson ¶ 0025). User information is entered into demographics, preferences, and biases database (Johnson ¶ 0025). Users can request a price quotation from a supplier for products (Johnson ¶ 0034). Sales lead data for suppliers is determined and forwarded to suppliers

(Johnson ¶ 0027). A supplier receives a market and trend data in the form of a report (Johnson ¶ 0037). The report includes information on users that specifically replace, exclude, or include products made by the supplier (Johnson ¶'s 0037-0040). The report can further include requests for quotes and requests for samples by users (Johnson ¶'s 0041-0042).

Dippold

03. Dippold is directed to a market research database that facilitates the management of, and access to, product categories (Dippold ¶ 0001).

04. Dippold describes a system that receives and processes product data from product suppliers (Dippold ¶ 0019). First and second groups of data are compared to each other (Dippold ¶ 0026). The intersection of the two groups is then determined (Dippold ¶ 0029). Data mining software is run on the intersection of the data sets (Dippold ¶ 0032). The data mining software generates a rule file that contains scoring rules (Dippold ¶ 0032). The scoring rules are if-then scoring rules and are generated for each characteristic type and value (Dippold ¶ 0032). The scoring rules are used to score categorized product data (Dippold ¶ 0033). The scoring indicates whether there is an agreement between the product categorizations provided by the product supplier and the product categorizations resulting from the scoring as based upon by the reference database (Dippold ¶ 0033).

McConnell

05. McConnell is directed to an item velocity monitoring system that analyzes point-of-sale data for retail stores in real time to determine if items are being sold faster than expected or slower than expected, and which can also predict stock-outs in advance and make accurate near-term sales forecasts for individual items at the store level (McConnell ¶ 0001). McConnell is concerned with the maintaining accurate inventory and the lost profits due to current inaccurate inventory forecasting systems (McConnell ¶ 0005).

06. McConnell describes an inventory management system that monitors the receipt of items and detects the movement of items and determines a probability pattern describing the velocity of the item (McConnell ¶ 0012).

ANALYSIS

Claims 5-8, 10, 12, 15, and 18 rejected under 35 U.S.C. § 102(e) as being anticipated by Johnson

The Appellants first contend that (1) Johnson fails to describe the limitation to provide a report to increase sales or profits of a retailer in a market category, as required by limitation [3] of claim 6 (App. Br. 11-12). We disagree with the Appellants. First, limitation [3] of claim 6 only requires an integrated category management report, where the report is based on an analysis of consumer transactional history and demographic data. Limitation [3] further requires that the report is a targeted opportunity assessment and market analysis that is partially customized for an intended

retailer end user. Limitation [3] does not require a specific definition for an integrated category management report or a targeted opportunity assessment. The specification also fails to provide a definition for these terms. Under the broadest reasonable construction, an integrated category management report is nothing more than a report describing multiple categories. An opportunity assessment is nothing more than any analysis that describes any type of opportunity. This can include the opportunity to increase sales, profits, efficiency, brand, number of products, or any other business opportunity. As such, Appellants' argument that Johnson fails to describe a report to increase sales or profits of a retailer in a market category is not found persuasive because these requirements are not found in the claimed limitations. The Appellants' argument that Johnson merely describes a zero sum game is not found persuasive for the same reason.

However, even if the claims were to be construed to require these specific definitions, we find that Johnson does describe these limitations. Johnson describes a data collection system that receives inputs from users in the form of project requests (FF 0102). The user's input is collected and analyzed as market research and user trend data (FF 01). The user trend data is forwarded to suppliers in the form of a report that consists of several categories of data, such as which users replace, exclude, and/or include products made by the supplier (FF 01-02). The suppliers use this information as sales leads (FF 02). As such, Johnson describes providing a report that contains sales leads information because it contains information regarding user trends on multiple categories using market and user trend data, i.e. an integrated category management report.

The Appellants further argue that the Advisory Action states that Johnson only provides the report to users and suppliers and users are not the actual users as required by the claims (App. Br. 11). However, the Appellants fail to provide any rationale as to why suppliers are not retailer end users. Limitation [3] does not require the report be partially customized by retailers *and* users; it only requires the report be customized for retailer *end* users. Johnson describes that a market and user trend report can be generated for suppliers customized to the solvents that those suppliers sell (FF 02). As such, the report is customized for that supplier and that supplier is a retail end user.

The Appellants further contend that (2) Johnson fails to describe a report that includes a price suggestion, as required by claim 15 (App. Br. 12). We disagree with the Appellants. Johnson describes that users can request a quote (RFQ) from a supplier for a product (FF 02). Johnson further describes that these RFQs can be integrated into a report for a supplier to use as a sales lead (FF 02). That is, the suppliers receive information on which products the users have been requesting prices for and can further provide a price based on these reports. That is, the suppliers are provided with information to base their price. This is the same as a price suggestion because the suppliers are provided with pricing data to base their price on. As such, Johnson describes claim 15.

Claims 11 and 20 rejected under 35 U.S.C. § 103(a) as unpatentable over Johnson and Dippold

The Appellants first contend that (1) Dippold fails to describe an automated analysis and providing an integrated category management report

that is targeted opportunity assessment and market analysis at least partially customized for the intended user, as required by limitation [3] of claim 6 (App. Br. 13). The Appellants further assert this argument in support of claim 20 (App. Br. 13-14). We disagree with the Appellants. The Examiner has relied on Johnson to describe the report, as discussed *supra*, and as such the Appellants' argument does not persuade us of error on the part of the Examiner because the Appellants are responding to the rejection by attacking the references separately, even though the rejection is based on the combined teachings of the references. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097(Fed. Cir. 1986).

The Appellants further contend that (2) Dippold describes scoring rules but fails to describe a score card, as required by claim 11 (App. Br. 13). We disagree with the Appellants. Dippold describes data mining software that analyzes the intersection of two sets of product data (FF 04). The data mining software uses a scoring file that defines scoring rules to be used in the analysis and the software assigns a score to the data elements (FF 04). The use of scoring rules and the assignment of a score based on criteria is the same function a score card provides. Although Dippold does not use the term "score card," Dippold describes the same functionality using scoring rules and the assignment of a score. As such, Dippold describes claim 11.

Claims 13, 16, 17, and 19 rejected under 35 U.S.C. § 103(a) as unpatentable over Johnson and McConnell

The Appellants first contend that (1) there is no reason or motivation to combine Johnson and McConnell (App. Br. 14). We disagree with the Appellants. Johnson is concerned with providing accurate information to suppliers such that they can make better business and marketing decisions (FF 01). Johnson addresses this concern by providing a system that provides suppliers with consumer trend data specific to that supplier (FF 02). McConnell is also concerned with enabling users to make good business decisions (FF 05). McConnell solves this concern by providing a system that monitors items and the movement of items to determine a probability pattern describing the velocity of the item, thereby allowing users to accurately plan inventory (FF 06). A person with ordinary skill in the art would have recognized to combine the teachings of Johnson and McConnell in order to make better business decisions by providing users with additional information to base decisions on. As such, Johnson and McConnell are concerned with the same problem and one of ordinary skill in the art would have been led to combine their teachings.

The Appellants also contend that (2) Johnson and McConnell fail to describe an automated assessment and neither reference suggests generation of a targeted opportunity assessment and market analysis (App. Br. 15). The Appellants specifically argue that the references fail to describe an integrated category management report (App. Br. 15). We disagree with the Appellants. The Examiner has relied on Johnson to describe the report, as discussed *supra*, and as such the Appellants' argument does not persuade us of error on the part of the Examiner because the Appellants are responding to the rejection by attacking the references separately, even though the rejection is based on the combined teachings of the references.

Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *Id.*

CONCLUSIONS OF LAW

The Examiner did not err in rejecting claims 5-8, 10, 12, 15, and 18 under 35 U.S.C. § 102(e) as being anticipated by Johnson.

The Examiner did not err in rejecting claims 11 and 20 under 35 U.S.C. § 103(a) as unpatentable over Johnson and Dippold.

The Examiner did not err in rejecting claims 13, 16, 17, and 19 under 35 U.S.C. § 103(a) as unpatentable over Johnson and McConnell.

DECISION

To summarize, our decision is as follows.

- The rejection of claims 5-8, 10, 12, 15, and 18 under 35 U.S.C. § 102(e) as being anticipated by Johnson is sustained.
- The rejection of claims 11 and 20 under 35 U.S.C. § 103(a) as unpatentable over Johnson and Dippold is sustained.
- The rejection of claims 13, 16, 17, and 19 under 35 U.S.C. § 103(a) as unpatentable over Johnson and McConnell is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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